

### **REMARKS/ARGUMENTS**

Claims 1-88 are pending in this application and presented for examination.

Claims 1, 28, 42, 56, 76 and 81 have been amended. No new matter has been entered. Early examination on the merits is respectfully requested.

In the previous response, Applicants elected Group III, drawn to a composition comprising Formula I, with traverse. Claims readable thereon include claims 28-58, and 82-88.

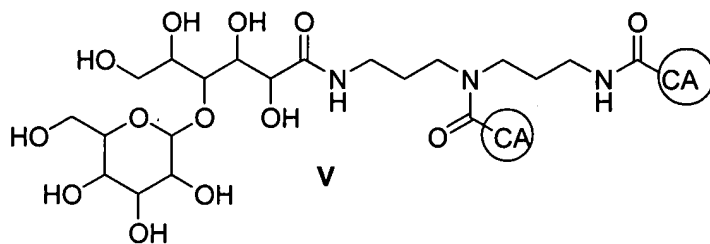
#### **I. FORMALITIES**

Support for the amendment to the claims and figure is found throughout the application as filed. More particularly, support for the amendment to claims 1, 28 and 42 is found, *inter alia*, on page 3, line 8, and in the second row of structures shown on page 2, of the preliminary amendment filed January 22, 2002. Support for the amendment to claims 56, 76 and 81 is found, *inter alia*, in Figure 26 as filed.

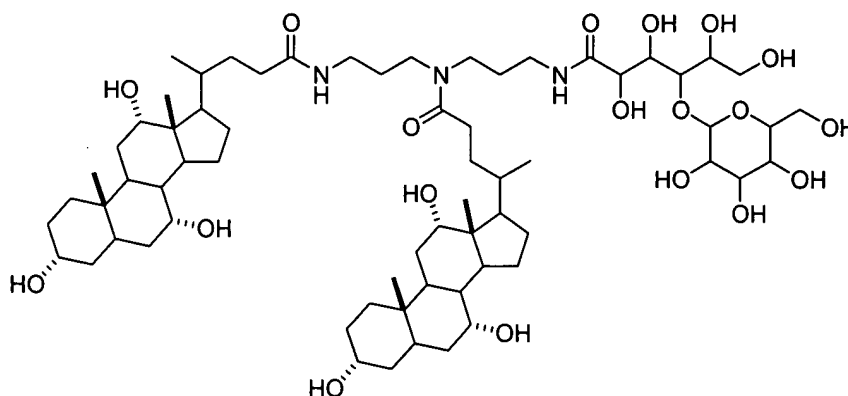
The structure of SYN-3 (Formula III) in claims 56, 76 and 81 and in Figure 21 has been amended to merely correct an obvious error, specifically to incorporate an oxygen atom that was inadvertently omitted. Support for this amended structure of SYN-3 is found in the structure of compound V in Figure 26. As set forth in M.P.E.P. § 2163.07, “[a]n amendment to correct an obvious error does not constitute new matter where one skilled in the art would not only recognize the existence of error, but also the appropriate correction.” In reviewing the structure of SYN-3 found in claims 56, 76, 81 and Figure 21, a skilled person would recognize that the structure of compound V in Figure 26 is the same, and therefore the omitted oxygen atom is obvious, as well as its correction. Therefore, Applicants submit that no new matter is present in this or any other portion of the present amendment.

#### **II. ELECTION OF SPECIES**

Applicants elected compound V as shown in Figure 26 as the elected species for examination:



This foregoing structure is the same structure drawn in corrected Figure 21 as compound III shown below:



Applicants maintain that there is no serious burden on the Examiner to search Group III and Group I jointly. Applicants respectfully request that the Examiner join claims 1-10, 26 and 27 to the elected Group III and examine claims 1-10, 26, 27, 28-58, and claims 82-88 on their merits.


As the Examiner is aware, under M.P.E.P § 821.04, if Applicants elect claims directed to the product, and the product claims are allowable, withdrawn process claims which depend from or otherwise include all the limitations of the allowable product claims must be rejoined. Process claims, which depend from, or otherwise include all the limitations of the patentable product, will be entered *as a matter of right*.

Appl. No. 10/055,863  
Amdt. dated May 3, 2004  
Restriction Requirement dated February 13, 2004

PATENT

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 925-472-5000.

Respectfully submitted,

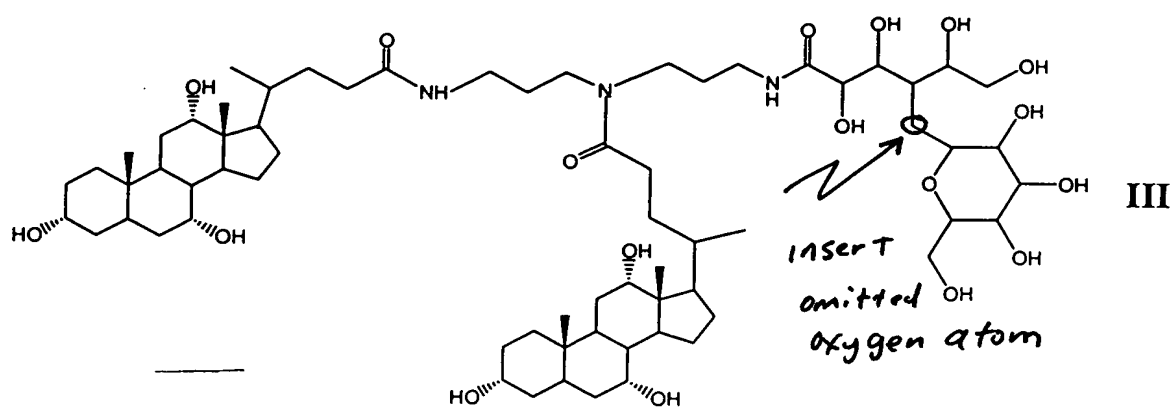


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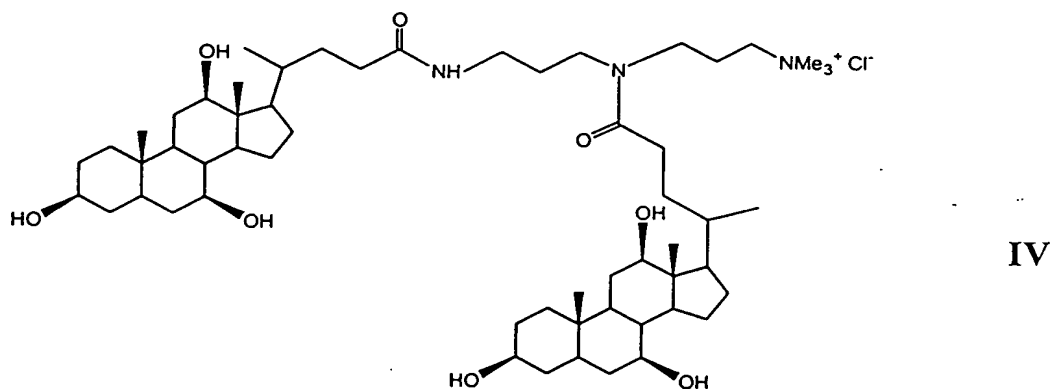
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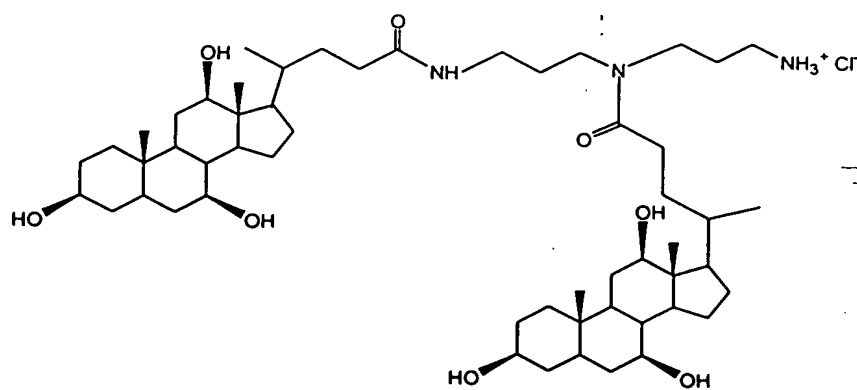
Figure 21



Syn3



A-tma



A-HCl